

HOONAH INDIAN ASSOCIATION and	:	Order Docketing and Dismissing
DOUGLAS INDIAN ASSOCIATION,	:	Appeal and Referring Matter to the
Appellants	:	Assistant Secretary - Indian Affairs
	:	
v.	:	
	:	Docket No. IBIA 95-163-A
ACTING DIRECTOR, OFFICE OF	:	
SELF-GOVERNANCE,	:	
Appellee	:	October 25, 1995

The Hoonah Indian Association and the Douglas Indian Association (appellants) sought review of a May 17, 1995, letter from the Acting Director, Office of Self-Governance (Director). Although the letter dealt with several issues, appellants objected to the allocation of higher education funds under the 1995 Annual Funding Agreement for the Southeast Alaska Self-Governance Compact. The Director's letter provided the following information concerning appeals:

If the Tribes, BIA participants or the Central Council [of Tlingit and Haida Indian Tribes of Alaska] wish to appeal this or any other decision, they may file the appeal in writing with me, as Acting Director, Office of Self -Governance. The appeal should also include a written explanation as to why the appellant believes the decision was wrong or unfair. Depending on the issues involved, I will either consider the appeal or present it to the Self-Governance Policy Council.

* * *

The Tribes or Central Council may also appeal the decision under Section 110 of P.L. 93-638 as amended [25 U.S.C. § 450m-1 (1994)]. Tribes withdrawing from the Compact may also establish grounds to appeal on their contract proposal under 25 C.F.R. Part 2.

(Letter at 2).

On September 5, 1995, the Board issued a predocketing notice and requested briefing on jurisdiction from the Assistant Secretary. The order stated:

In Mille Lacs Band of Ojibwe v. Acting Deputy Commissioner of Indian Affairs, 27 IBIA 94 (1994), the Board considered information from the Assistant Secretary - Indian Affairs relating to appeals from self-governance compact decisions, and to the relationship between appeals to the Policy Council and to Federal court under Section 110 of P.L. 93-638 [as amended]. Because of the procedural background of Mille Lacs, the jurisdictional questions were not resolved. Although noting that jurisdictional questions would continue to arise until there was clear guidance

as to appeal procedures under self-governance compacts, the Board dismissed the appeal before it as a matter of comity, in favor of consideration of the issues by the Assistant Secretary.

Unfortunately, the Director's listing of the appeal procedures in his May 17, 1995, letter does not clarify the jurisdictional picture because it mentions three appeal routes, but does not state which issues can/should be appealed to which forum. In particular, the letter does not indicate which Departmental forum has jurisdiction over the particular issue for which appellant seeks review; i.e., whether BIA properly allocated higher education funds on a basis other than population. It is possible that this issue can/should be appealed to the Director for consideration either by the Director or the Policy Council, or that it can/should be appealed under 25 CFR Part 2 because it is an issue relating to appellant's contract proposal and appellant is a "Tribe[]" withdrawing from the Compact." There is also a further question concerning whether the appeal was timely filed.

(Order at 2).

The Board received a brief on jurisdiction from the Assistant Secretary on October 16, 1995. The brief states:

During the Self-Governance Demonstration Project, the Assistant Secretary - Indian Affairs implemented an informal approach which entails the tribe or consortium sending a request for reconsideration of a matter to the Assistant Secretary as Chairperson of the Self -Governance Policy Council, and also providing the Office of Self-Governance with a copy of the request. The Policy Council is composed of the Deputy Assistant Secretary - Indian Affairs, the Deputy Commissioner of Indian Affairs, the Director of the Office of Self-Governance, and the Assistant Secretary herself. The Council is assisted by the Solicitor's Office and the Director of American Indian Trust. The Council was created to advise the Assistant Secretary on policy matters and other major decisions related to the program. This informal appeal procedure, in part, was established to provide a forum for both the BIA and the tribes when policy matters arose during the Demonstration Project which were difficult to address due to the lack of regulations and established policy. Determinations made by the Policy Council, as signed by the Assistant Secretary, are final for the Department and may be appealed through section 110.

* * * Tribes have the initial option of filing an appeal under Section 110, but are strongly encouraged to use the alternative appeals process through the Policy Council * * * until such time as the self-governance negotiated rulemaking process concludes with a formalized administrative appeals process.

(Response at 1-2). The Assistant Secretary also suggests that the Director's reference to an appeal under 25 CFR Part 2 was incorrect under the circumstances of this case.

After considering the Assistant Secretary's brief, the Board believes that, despite the Director's reference to an appeal under 25 CFR Part 2, there is no essential difference between this case and Mille Lacs. Therefore, the Board concludes that, as a matter of comity, this case should be referred to the Assistant Secretary for review in accordance with the procedures she has established for reviewing self-governance appeals.

Citing regulations in 25 CFR Part 2 and 43 CFR Part 4, Subpart D, the Assistant Secretary also argues that the appeal should be dismissed as being untimely. The Board does not address this argument. The Assistant Secretary has not mentioned, and the Board has no independent knowledge of, any time limits that may have been established under the Assistant Secretary's informal appeals process, and whether, as under 25 CFR 2.7, those time limits are tolled if not communicated to interested parties. Accordingly, the Board leaves to the Assistant Secretary the determination of whether the appeal is untimely under the informal process.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal from the May 17, 1995, decision of the Acting Director, Office of Self-Governance, is docketed, but dismissed as a matter of comity. The matter is referred to the Assistant Secretary for appropriate consideration.

Kathryn A. Lynn
Chief Administrative Judge

Anita Vogt
Administrative Judge